

bar association as Madam Justice of the Supreme Court, needless to say she took great delight in relating that wonderful advice I had given her to run for the Governor of Arizona. We have been very pleased to have her back several times, and as far as I can tell she has never failed to mention that story.

I mention that story only to say she was right, once again, and she has contributed honorably and significantly to the judicial service of this Nation.

I can only say on behalf of those who were her constituents, as Americans, and those who know her as a friend, we wish you the very best. We go forward with our deep gratitude for all you have contributed and our very best wishes for health, happiness, and a long life.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Virginia is recognized.

SUPREME COURT NOMINATIONS

Mr. WARNER. Mr. President, today our President, President Bush, spoke so eloquently upon learning of Justice O'Connor's desire to step down and spend more time with her husband. I think that is such a beautiful and warm way to send a message all across America.

I say, with a deep sense of humility, I consider her a friend. I am privileged to know her. I know her husband. He loves the outdoors. He loves the golf game. They are a wonderful couple who have inspired America.

It is interesting, I also heard, this morning, another broadcast in which a retired Federal circuit court judge—an individual well known to the Senate, well known to America—in commenting upon this retirement, did so in a way that left me troubled. That is what brings me to the floor. I am not sure he paid the respect this great Justice is owed. I will let people who desire to look at his remarks.

But then he said, in so many words—and used the word—that the Senate advice and consent process today is “corrupt.” That moved me to the point where I felt compelled to speak out today.

What a privilege it has been for me, on behalf of Virginia, to stand on this floor for 27 years and to participate in debates and vote for the best interests of our Nation and the Commonwealth of Virginia.

As I look at Justice O'Connor's record, it exemplifies to me a quotation from Shakespeare that I have always tried to follow: Unto thine own self always be true.

The record will show and history will record the magnificent way in which she discharged public office not only in the Supreme Court but, indeed, back in the legislative body of her beloved State of Arizona.

I will participate with my colleagues in this debate, this careful and fair and objective consideration of that individual selected by our President. As sure as I am standing here, I am confident that when it reaches the vote—and I think we will have an up-or-down vote; I will certainly do what I can to ensure that takes place—the American public will look back upon the duty of the Senate, under the Constitution, as having been fulfilled with dignity and in a manner to reflect confidence within this great Nation and our citizens.

As you know, Mr. President, the executive branch, with the President, has a role in this nomination coequal to that of the Senate. In studying history, the role of the President is set out so carefully. I did this research when I worked with the “Gang of 14,” which I will mention here momentarily.

But Alexander Hamilton, in *Federalist Paper No. 66*, said:

It will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no—

I repeat: “no”—
exertion of choice on the part of the Senate. They may defeat one choice of the Executive—

I hope that does not happen in this case—

and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President.

How clear that is. And working with Senator BYRD and the other members of the 14 Senators who got together—and, by the way, I think the work of that group reflects credit on this institution—some six Federal judges are now serving our Nation as a consequence of their work, work which I always felt was in support of the Senate leadership and their valiant efforts to see that the consideration by Senators of nominees be fair and expeditious.

But in the context of our sort of agreement—and I quote from it—

We [the 14] believe that, under article II, Section 2, of the United States Constitution, the word “Advice” speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

As it has in contemporary times.

The Founding Fathers put the word “advice” in there, drawn from our English language, clearly defined in dictionaries and by precedent. It simply speaks to the role of the Senate and its ability to counsel with the

President. I am confident that will take place.

This is a magnificent opportunity for the President, this nomination, in so many respects. Clearly, he is fully entitled, under the Constitution, to select an individual whose philosophy is basically consistent with the core values of our President and his goals that he wishes to achieve, not only during the course of his Presidency but with confirmation, judicial nominees remain on for some 10, 15, 20, 25 years—long after the President has stepped down from office. So that shows you the value of this nomination.

But in this instance, our President has an opportunity, against a background of troubled times in our country. We are engaged in a very difficult war on terrorism.

Great sacrifices are being made by our country. He can step forward and be a uniter, not a divider, in this nomination by selecting someone who will gain the confidence of the majority of Americans, someone who will enable the two aisles here to remove the center aisle, and we can join in a bipartisan way and give strong ratification to the President's choice.

It is interesting. I went back to General Eisenhower. I reached back 50 years to examine the manner in which the President and the Senate worked together under this advice and consent clause. In that 50-year period, there have been 27 total nominees. Fifteen, better than half, were passed by the Senate either with voice vote—and as the Presiding Officer knows full well, that means total unanimity in the Senate—or with more than 80 votes, so 3 by voice and over half of those by 80 votes. Only 1 of the 27 passed by fewer than 60 votes, that threshold that describes the filibuster. Three were rejected by the Senate and one withdrew. To me, that shows action in history for a half a century, consistent with what the Founding Fathers devised in this magnificent Constitution of ours.

That individual selected by the President—I suppose he or she, as the case may be—will be labeled a conservative. That is fine. That doesn't trouble me at all. That doesn't divide. That is consistent with the President's basic philosophy. But if we can put on the bench of the highest Court in the land, a Court that decides literally decisions which affect every one of us—every single American is affected by their decisions—an individual who will begin with the confidence of the American public as reflected in a strong bipartisan vote in this Chamber, that will be a great legacy for the President as a uniter and not a divider.

I wish to reflect on the consultation. I am confident it will take place. There is no way of trying to describe it. It is up to the President. It is within his discretion. But I have confidence it will take place in a manner that history will document that will be more than adequate for the purpose.

I also listened to a report this morning where one group has been gathering

funds. They said they had \$20 million ready to throw behind the President's nominee. Another group had an equal amount of money to throw behind such opposition as to mount against the nominee. They have a perfect right under freedom of speech, the magnificence of this country, but it would be my hope that they will play a constructive role and not look at this great moment in history of the selection of a Justice to the Court as something likened to a Super Bowl where the sides get in and start the clash. Rather, they should view themselves as being in consultation with the Senate—Senators individually and collectively—and do it in a constructive way.

I remember so well the role of the outside groups in that extraordinary chapter of Senate history with regard to the Schiavo case. History will record the viewpoints of many as to how it was done. I myself will forever be concerned about the role, in particular, of the Congress and, most specifically, the Senate. I remember Palm Sunday when only three Senators, myself and two others, were on this floor, at which time we didn't have time to speak. We could only include a written statement which is in the CONGRESSIONAL RECORD. And I did so, expressing my disagreement with having the Senate go on record as supporting a greater role of the Federal judiciary.

I felt the tenth amendment clearly established the prerogatives of the several States to handle matters of this type. I was the sole "no" vote that day. But only three Senators acted. The news broadcast said the Senate of the United States has decided. I will often reflect on that moment as to whether it did. Although accurate, three Senators can act on behalf of the body, but that was an example of where the outside interested parties became quite overbearing and in some ways distorted the important issue. I don't disagree with those who felt different than I. But they obfuscated and overdramatized the issue.

There is nothing more important than trying to save a life. I understand that. I respect that. But I use that as an example to say, we cannot, in my judgment, in these troubled times in our history experience another chapter such as that.

This nominee, I am confident, will be one who, first, with the selection by the President and then, in the course of review by the Judiciary Committee and the full Senate must be viewed as one committed to uphold and support the Constitution of the United States. The term "activist" jurist is one that troubles me and, indeed, many people, because it is the Congress of the United States with regard to Federal legislation and the respective 50 State legislatures. They are the bodies to write the law, not the State/Federal judiciary.

We have seen a tendency recently for opinions to reflect a decision that doesn't necessarily rest on the core values of the Constitution but, rather,

the core values of the writers of the opinion.

I hope we see that this process moves forward and reflects great credit on our President and credit on this institution. As I say, the gang of 14 played a constructive role in the history of this body. The question was the use or non-use of what was termed "the nuclear option" to set aside the 60-vote rule of the Senate. It is my fervent hope we don't reach that option—that option is still on the table; the record is clear—that we don't have any tendency or recourse to go to that because in these troubled times, when this country needs to be united, we would not want to send to the Supreme Court, by virtue of a vote under the doctrine of the nuclear option, that individual who would be tattooed for life. That is not what we need.

We want that individual to go up there with the full confidence and trust of the American people, the widest margin of people that could possibly be drawn together, and to represent them and to make decisions which they will perceive were done by that individual and the other members of the Justices of the Court that are in the best interest of the country and each individual American.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RETIREMENT OF ROBERT ABBEY

Mr. REID. Mr. President, I rise today on the occasion of his retirement, to honor the 27 years of public service of Robert V. Abbey of Reno, NV. Bob hails originally from Mississippi. He was born in Clarksdale and earned his bachelor's degree in Resource Management at the University of Southern Mississippi. Over the past 8 years, I am proud to say he has become a Nevadan.

Bob began his public service working for the U.S. Army Corps of Engineers. Later he moved to the Bureau of Land Management where he has distinguished himself as a dedicated land manager, visionary leader, and exceptional citizen.

Bob's early career at BLM included tours of duty as a budget analyst in Washington, DC; assistant district manager in Yuma, AZ; district manager in Jackson, MS; and associate and acting State director in Colorado. Since the fall of 1997, Bob has served as the Nevada State director of the BLM. His job may very well be the toughest in Nevada and perhaps in the ranks of the BLM; in any case, it is among the most important for both.

Although his address has changed many times during his career, his commitment to public lands and public service has never wavered. The West and Nevada are better for it.

Today, Bob Abbey leads a staff of 750 employees who manage 48 million acres of public land in Nevada. He has led the Nevada BLM during an exciting and historic time. Increased public land use, record population growth, evolving management mandates and shrinking budgets represent just a few of the challenges facing the Nevada BLM. Bob Abbey has handled every difficulty with grace and vision.

During his tenure, Bob directed the implementation of the Southern Nevada Public Lands Management Act. This is no small task given that Clark County, NV leads the Nation in sustained growth and development and ever increasing recreational use of public lands.

Bob and his staff also helped me and the other members of the Nevada congressional delegation in the development of the Clark and Lincoln County land bills. These bills were among the most significant public lands legislation in the 107th and 108th Congresses, respectively, and Bob's leadership helped make them possible.

Bob's motto that we have more in common than our differences has set the tone for the best working relationships between Federal land managers and Nevadans in my memory. He has inspired his employees to solve problems, take pride in their work, and serve the public with distinction. The results serve as testament to his character, courage, and conviction.

At the end of next week, Bob Abbey will retire from Federal service with a remarkable record of achievements. But perhaps his greatest contribution as a land manager will come to fruition while he is enjoying his retirement with his wife Linda.

After wildfires devastated vast swaths of rangeland in Nevada and other Western States in 1999 and 2000, Bob played a key role in crafting a blueprint for rangeland and ecosystem restoration in the West. The so-called Great Basin Restoration Initiative is a grand vision and roadmap for healing the landscape in Nevada. Unfortunately, to date, the BLM and Department of Interior have yet to match Bob's vision with appropriate funding. It is my hope that this is a temporary delay and that one day soon, a thriving Great Basin ecosystem will serve as the enduring legacy of Bob Abbey's public service.

Although I regret that Bob Abbey is retiring, I know I speak for thousands of Nevadans when I thank him for his exemplary public service and wish him well with his future endeavors. We know Bob has made Nevada and our Nation a better place.

ENERGY POLICY ACT OF 2005

Ms. SNOWE. Mr. President, the United States has a long history of creativity and innovation when it comes to energy. But, somehow we cannot seem to break away from our dependency on foreign oil as the dominant energy source. It is clear that we must